

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:12.01.2017

CORAM

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Second Appeal No.416 of 1999

Thajudeen

... Appellant/Plaintiff

/versus/

1.Nagarajan

2.Dharmalingam

3.Natarajan

... Respondent/Defendants 1,2&5

Second Appeal has been filed under Section 100 of the Civil Procedure Code, against the decree and judgment dated 15.11.1996 made in A.S.No.163/1996 on the file of the Additional Sub Court, Nagapattinam, reversing the decree and judgment dated 06.12.1995 in O.S.No.557 of 1994 on the file of the District Munsif Court, Mannargudi.

For Appellant :Mr.M.V.Venkataseshan

For Respondents:Mr.N.Sankaravadivel

J U D G M E N T

The appellant is the plaintiff. The second appeal is preferred against the reversing judgment passed in the suit for permanent injunction.

2. The short point involved in this case is that, the suit property for which, one Balasubramanian had patta in his name, is a water tank. Fishing activities is carried on in the said water tank. The appellant herein has purchased the suit property on 26.06.1992 vide Ex.A4. While so, the defendants disturb his possession and enjoyment of the suit property. Hence, the suit has been filed for the relief of permanent injunction restraining the defendants from disturbing the peaceful possession of the plaintiff. By way of written statement, the title of the plaintiff was disputed and it was pleaded by the defendants that the suit property is a public property used by the villagers for public purpose.

3. The trial Court allowed the suit in favour of the plaintiff. Aggrieved by that, the defendants have preferred the first appeal and pending the appeal, it appears that the patta issued in favour of the vendor Balasubramanian was cancelled and the Revenue Authorities have finally concluded that the suit property is the Government Natham Poromboke, wherein Ex.A4 relied on by the plaintiff held to be void and cancelled by the Revenue Authorities subsequent to the disposal of the suit. Taking note of the subsequent event, the first appellate Court has allowed the suit.

4. Aggrieved by that, the plaintiff/appellant has taken out the second appeal and at the time of admission, this Court has formulated the following Substantial Question of Law for consideration:-

Whether the lower appellate Court is right in holding that the suit property is a Government Poromboke land under Ex.B5 when it was obtained after suit?

5. The learned counsel appearing for the appellant submitted that the first appellate Court ought not to take note of document subsequent to the suit. By relying upon Ex.B5, the first appellate Court has erred in holding that the appellant has no right over the suit property.

6. Per contra, the learned counsel appearing for the respondents submitted that by illegal means the plaintiff/appellant obtained sale deed over the suit property, which is a Government poromboke and is used by the community in common. The illegality has been rectified by the Revenue Authorities by issuing Ex.B5. Though it is subsequent to the disposal of the suit, the Revenue Authorities being competent to record the holdings of the lands as per the landlord, have rightly appreciated the evidence and documents and has held that the suit property which is the water body is Government land used by the villagers in common. Therefore, there is no error or illegality in the judgment passed by the first appellate Court.

7. The evidence relied on by the respective parties and the finding of the Courts below clearly indicates that the suit property is a water body. Though erroneously patta was granted in favour of the one Balasubramanian and he has alienated the property vide Ex.A4 in favour of the appellant, the error has been rectified (or) corrected by subsequent revenue proceedings which has reached finality and the same not been appealed by the plaintiff/appellant.

8. The fact being so, since the vendor of the plaintiff/appellant has no right to alienate the property, Ex.A4 is non est inlaw and no right flows to the appellant through Ex.A4. Since this Court finds no Substantial Question of Law is involved in this appeal and the appeal is liable to be dismissed. Accordingly, the second appeal is dismissed. The judgment and decree of the first appellate Court in A.S.No.163 of 1996 dated 15.11.1996 is confirmed. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional Sub Court,
Nagapattinam.
- 2.The District Munsif Court,
Mannargudi.

Copy to

The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.N.Sankaravadivel, Advocate Sr.3483

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S.A.No.416 of 1999

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